

**IN THE CLAIMS:**

A listing of the status of all claims 1-38 in the present patent application is provided in attached Appendix A.

**REMARKS**

The Office Action dated April 28, 2004, has been received and carefully considered. Reconsideration of the outstanding rejections in the present application is respectfully requested based on the following remarks.

**I. THE ANTICIPATION REJECTION OF CLAIMS 1-38**

On page 2 of the Office Action, claims 1-38 were rejected under 35 U.S.C. § 102(e) as being anticipated by Siu (U.S. Patent No. 6,252,851). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S.

International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). "Such possession is effected if one of ordinary skill in the art could have combined the publication's description of the invention with his own knowledge to make the claimed invention." Id..

The Examiner asserts that Siu discloses organizing a forward data buffer into one or more queues that store at least one forward data packet. In support of this allegation, the Examiner cites to col. 4, lines 20-36. However, Applicant respectfully submits that the cited portion of Siu does not disclose the claimed feature. The cited portion only makes mention of a queue in the statement that "an estimate is maintained of effective queue size...." No mention is made that this is a forward data buffer or that it stores forward data as claimed by applicant. For at least this reason, Applicant respectfully submits that Siu fails to disclose or suggest the claimed feature of "organizing a forward data buffer

into one or more queues that store at least one forward data packet."

Siu fails to disclose or suggest other claimed features. For example, Applicant respectfully disagrees that Siu discloses or suggests the claimed feature of "calculating the network device's advertised window size by implementing an integral control algorithm that uses information pertaining to the one or more queues." The Examiner relies on Siu, col. 6, lines 29-67 to allegedly disclose or teach this feature. However, the cited passage states that when window size  $w$  is less than some value  $W_{mid}$ , the window size is simple increased by one each time an acknowledgement arrives. Therefore, Siu does not disclose a calculation based upon information pertaining to the queue size. For at least these reasons, applicant respectfully submits that the rejection of claim 1 is improper and requests that it be withdrawn.

Claims 11, 18 and 28 recite features similar to the above that are also not disclosed or suggested by Siu. For at least these reasons, applicant respectfully submits that the rejections of claims 11, 18 and 28 are improper and requests that they be withdrawn.

Claims 2-10, 12-17, 19-27 and 29-38 are dependent upon one of independent claims 1, 11, 18 or 28. Thus, since independent claims 1, 11, 18 and 28 should be allowable as discussed above, claims 2-10, 12-17, 19-27 and 29-38 should also be allowable at least by virtue of their dependency on independent claims 1, 11, 18 or 28. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, some of the dependent claims (e.g., claim 4) recite "calculating the network device's advertised window size  $W_i(n)$ , based, at least in part, upon the current error signal  $e_i(n)$  according to the equation:  $W_i(n) = [W_i(n-1) + \alpha e_i(n)]_{W_{\min}}^{W_{\max}}$ , where  $\alpha$ ,  $W_{\max}$ , and  $W_{\min}$ , are predetermined parameters." Siu does not disclose or suggest this feature.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 2-10, 12-17, 19-27 and 29-38 be withdrawn.

## II. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously

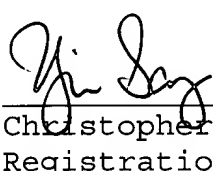
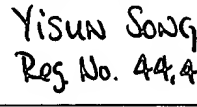
solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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